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OFFICE OF PETITIONS

CLARK & ELBING LLP 101 FEDERAL STREET BOSTON MA 02110

In re Application of

Kraus et al.

Application No. 09/698,893

Filed: October 27, 2000

Atty Docket No. 07588/008001

DECISION ON APPLICATION

: FOR

PATENT TERM ADJUSTMENT

:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705," filed January 29, 2010. Applicant requests that the patent term adjustment indicated on the initial determination of patent term adjustment be corrected from zero (0) days to three hundred and fifty-nine (359) days.

The application for patent term adjustment is GRANTED.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **three hundred and fifty-nine (359)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

Applicant has asserted that the period of applicant delay should be reduced, and one period of examination delay should be assessed. Applicant's arguments have been considered, and each has been deemed to be persuasive.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed July 13, 2004, which set a shortened statutory period for reply of three months. No response was received, and no extensions of time under the provisions of 37 C.F.R. § 1.136(a) were requested. Accordingly, the above-identified application became abandoned on October 14, 2004. A notice of abandonment was mailed on January 25, 2005.

A petition pursuant to 37 C.F.R. 1.181 was filed on February 4, 2005. The petition was granted via the mailing of an Office action on February 4, 2005, which noted that the petition was accompanied by a postcard receipt which evinces that a response was received in the Office on January 18, 2005 (three months and 97 days after the mailing of the non-final Office action).

Four months and 596 days after the response of January 18, 2005 was received, the Office mailed a notice of non-responsive amendment. A response was received on January 16, 2007 (728 days after the response of January 18, 2005). A 728-day reduction was assessed pursuant to 37 CFR 1.704(c)(8).

The Office agrees that the 728-day reduction was improper, and a 97-day reduction should have been assessed, pursuant to 37 CFR $1.704\,(b)$.

The Office further agrees that a 596-day adjustment should have been assessed, pursuant to 37 CFR 1.703(a)(2).

The reduction of 728 days has been removed, and a reduction of 97 days has been entered.

An adjustment of 596 days has been entered.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is three hundred and fifty-nine (359) days (791 days of Office delay minus 432 days of Applicant delay).

Submission of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fee is required.

Applicant is reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries regarding this matter should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.

Anthony Knight

Director

Office of Petitions

Enclosure: Copy of updated PAIR screen



PTA/PTE Information Pa

Patent Term Adjustment

Patent Term Extension

Application Number*: 09698893 Search

Explanation of PTA Calculation

Explanation of PTE Calculation

PTA Calculations for Application: 09698893

Applicant Delay (APPL) 1063 PTO Manual Adjustment 1227 Non-Overlapping USPTO Delays: 195 Total PTA (days) 359 OverLapping Days Between (A and B) or (A and C) **Application Filing Date** 10/27/2000 A Delays 195 B Delays 0 C Delays 0 **Issue Date of Patent**

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration Duration PTO APPL	Parent Action Number
118	09/04/2010		P028	Adjustment of PTA Calculation by PTO	1227	•	
108	12/15/2009		MN/=.	Mail Notice of Allowance		0	
107	12/08/2009		IREV	Issue Revision Completed		0	
106	12/08/2009		DVER	Document Verification		•	
105	12/08/2009		N/=.	Notice of Allowance Data Verification Completed		0	

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Case Docketed to Examiner in GAU	Notice of Allowability	Date Forwarded to Examiner	Response after Non-Final Action	Request for Extension of Time - Granted	' Electronic Review	Email Notification	Mail Non-Final Rejection	Non-Final Rejection	Date Forwarded to Examiner	Response to Election / Restriction Filed	Request for Extension of Time - Granted	Electronic Review	Email Notification	Mail Restriction Requirement	Requirement for Restriction / Election	Date Forwarded to Examiner	Date Forwarded to Examiner	Disposal for a RCE / CPA / R129	Amendment Submitted/Entered with Filing of CPA/RCE	Request for Continued Examination (RCE)	Request for Extension of Time - Granted	Workflow - Request for RCE - Begin	' Electronic Review	Email Notification	Mail Final Rejection (PTOL - 326)	Final Rejection	Date Forwarded to Examiner	Disposal for a RCE / CPA / R129	Email Notification	Mail Examiner Interview Summary (PTOL - 413)	Request for Foreign Priority (Priority Papers May Be Included)	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received	Request for Continued Examination (RCE)	Workflow - Request for RCE - Begin
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07/12/2004 CTNF Non-Final Rejection 06/04/2004 FWDX Date Forwarded to Examiner 06/04/2004 ABN9 Disposal for a RCE / CPA / R129 06/04/2004 RCAP Reference capture on IDS 06/01/2004 RCEX Request for Continued Examination (RCE) 06/01/2004 XT/G Request for Extension of Time - Granted 06/01/2004 MR44 Information Disclosure Statement (IDS) Filed Information Disclosure Statement (IDS) 06/01/2004 WAMD Workflow incoming amendment IFW 06/01/2004 WAMD Workflow - Request for RCE - Begin	48	07/13/2004	MCTNF	Mail Non-Final Rejection	•	0
06/04/2004 FWDX Date Forwarded to Examiner 06/04/2004 ABN9 Disposal for a RCE / CPA / R129 06/04/2004 RCAP Reference capture on IDS 06/01/2004 RCEX Request for Continued Examination (RCE) 06/01/2004 XT/G Request for Extension of Time - Granted 06/01/2004 M844 Information Disclosure Statement (IDS) Filed Information Disclosure Statement (IDS) 6/01/2004 WAMD Workflow incoming amendment IFW 06/01/2004 WAMD Workflow - Request for RCE - Begin	47	07/12/2004	CTNF	Non-Final Rejection		0
06/04/2004 ABN9 Disposal for a RCE / CPA / R129 06/04/2004 RCAP Reference capture on IDS 06/01/2004 RCEX Request for Continued Examination (RCE) 06/01/2004 XT/G Request for Extension of Time - Granted 06/01/2004 M844 Information Disclosure Statement (IDS) Filed Information Disclosure Statement (IDS) Filed Workflow incoming amendment IFW 06/01/2004 WAMD Workflow - Request for RCE - Begin	46	06/04/2004	FWDX	Date Forwarded to Examiner		0
06/04/2004 RCEX Request for Continued Examination (RCE) 06/01/2004 XT/G Request for Extension of Time - Granted 06/01/2004 XT/G Request for Extension of Time - Granted 06/01/2004 M844 Information Disclosure Statement (IDS) Filed 06/01/2004 WAMD Workflow incoming amendment IFW 06/01/2004 BRCE Workflow - Request for RCE - Begin	44	06/04/2004	ABN9	Disposal for a RCE / CPA / R129		0
06/01/2004 RCEX Request for Continued Examination (RCE) 06/01/2004 XT/G Request for Extension of Time - Granted 06/01/2004 M844 Information Disclosure Statement (IDS) Filed 06/01/2004 WAMD Workflow incoming amendment IFW 06/01/2004 BRCE Workflow - Request for RCE - Begin	42	06/04/2004	RCAP	Reference capture on IDS		0
06/01/2004 XT/G Request for Extension of Time - Granted 06/01/2004 M844 Information Disclosure Statement (IDS) Filed Information Disclosure Statement (IDS) Filed WIDS Filed 06/01/2004 WAMD Workflow incoming amendment IFW 06/01/2004 BRCE Workflow - Request for RCE - Begin	45	06/01/2004	RCEX	Request for Continued Examination (RCE)		0
06/01/2004 M844 Information Disclosure Statement (IDS) 06/01/2004 WIDS Filed 06/01/2004 WAMD Workflow incoming amendment IFW 06/01/2004 BRCE Workflow - Request for RCE - Begin	43	06/01/2004	XT/G	Request for Extension of Time - Granted		0
06/01/2004 WIDS Information Disclosure Statement (IDS) Filed 06/01/2004 Workflow incoming amendment IFW 06/01/2004 BRCE Workflow - Request for RCE - Begin	41.7	06/01/2004	M844	Information Disclosure Statement (IDS) Filed		0
06/01/2004 Workflow incoming amendment IFW 06/01/2004 BRCE Workflow - Request for RCE - Begin	14	06/01/2004	WIDS	Information Disclosure Statement (IDS) Filed		0
06/01/2004 BRCE Workflow - Request for RCE - Begin	40	06/01/2004	WAMD	Workflow incoming amendment IFW		0
-	39	06/01/2004	BRCE	Workflow - Request for RCE - Begin		0

0	•	27	0	0	0	0	0	0	0	0	0	0	0	0	21	•	0	0	0	0	0	0	0	0	0	7	0	0	0	0	0	•
		93													37											·						
Mail Advisory Action (PTOL - 303)	Advisory Action (PTOL-303)	Notice of Appeal Filed	Request for Extension of Time - Granted	IFW Amended case processing Complete	Reference capture on IDS	Date Forwarded to Examiner	Amendment after Final Rejection	Request for Extension of Time - Granted	Information Disclosure Statement (IDS) Filed	Information Disclosure Statement (IDS) Filed	Correspondence Address Change	Mail Final Rejection (PTOL - 326)	Final Rejection	Date Forwarded to Examiner	Response after Non-Final Action	Request for Extension of Time - Granted	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received	Mail Non-Final Rejection	Non-Final Rejection	X-Pre-Legal Complete Amended Case	Date Forwarded to Examiner	Response to Election / Restriction Filed	Request for Extension of Time - Granted	Information Disclosure Statement (IDS) Filed	Information Disclosure Statement (IDS) Filed	Mail Restriction Requirement	X-Post-Legal Complete Rejection	Requirement for Restriction / Election	Miscellaneous Incoming Letter	Case Docketed to Examiner in GAU	Information Disclosure Statement (IDS) Filed	Information Disclosure Statement (IDS) Filed
MCTAV	CTAV	10/01/2003 N/AP	XT/G	TSSA	RCAP	FWDX	A.NE	XT/G	M844	WIDS	C.AD	MCTFR	CTFR	FWDX	03/18/2003 A	XT/G	AF/D	MCTNF	CTNF	AC20	FWDX	ELC.	XT/G	M844	MIDS	12/27/2001 MCTRS	RE16	CTRS	LET.	DOCK	M844	WIDS
03/09/2004	03/06/2004	01/02/2004	01/02/2004	12/10/2003	12/10/2003	12/10/2003	12/04/2003	12/04/2003	12/04/2003	12/04/2003	07/16/2003	07/01/2003	06/30/2003	04/28/2003	04/24/2003	04/24/2003	04/24/2003	12/18/2002	12/16/2002	10/02/2002	10/02/2002	09/16/2002	09/16/2002	09/16/2002	09/16/2002	07/10/2002	07/10/2002	07/10/2002	02/22/2002	10/10/2001	09/10/2001	09/10/2001
38	37	36	35	34	33	32	31	30	29.7	59	28	27	56	25	24	23	22	21	20	19	18	17	16	15.7	15	14	13	12	11	10	9.7	6

7	05/20/2001	DOCK	Case Docketed to Examiner in GAU	0	
9	04/17/2001	OIPE	Application Dispatched from OIPE	0	
Ŋ	04/17/2001	COMP	Application Is Now Complete	0	
80	03/26/2001	A.PE	Preliminary Amendment	0	
4	01/02/2001	INCD	Notice MailedApplication Incomplete Filing Date Assigned	0	
m	01/02/2001	C.AD	Correspondence Address Change	0	
7	11/30/2000	SCAN	IFW Scan & PACR Auto Security Review	0	
-	10/27/2000	IEXX	Initial Exam Team nn	0	
Exp	Export to: Excel				
					4